

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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DATE: **02/20/2013**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **5**

REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **582-12-3195**

JUDGE ROY SCUDDAY

FAX TO:

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 20, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. 512/239-5533

Re: SOAH Docket No. 582-12-3195; TCEQ Docket No. 2011-1684-UCR; In the Matter of the Application by the City of Tyler to Obtain Dual Certification with a Portion of CCN No. 20694 and to Amend CCN No. 20319

Dear Mr. Trobman:

On January 23, 2013, Protestant Tall Timbers Utility Company (TTUC) filed exceptions to the Proposal for Decision (PFD) and the Proposed Order issued January 11, 2013, to correct its legal name in the above case. On February 8, 2013, the City of Tyler (City) filed exceptions to the PFD and Proposed Order. On February 18, 2013, Protestant TTUC filed its Reply. On February 19, 2013, the ED filed its Reply.

After reviewing the exceptions and replies thereto, the Administrative Law Judge (ALJ) agrees that the name of Protestant TTUC be corrected to Tall Timbers Utility Company, Inc., dba Liberty Utilities. The ALJ further agrees that the following Findings of Fact should be changed:

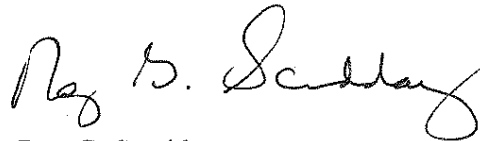
Finding of Fact No. 33. On one occasion, TTUC charged capacity fees to Cumberland Place Apartments located within the city limits, **in the amount of \$149,968**, which fees were not authorized under its tariff with City. **There is insufficient evidence to show that TTUC has refunded the fee.**

Finding of Fact No. 34. In April 2009, TTUC refused to connect three newly constructed homes in Area 5 to its system until the collection systems constructed by the developer met the requirements of TTUC's Development Guide and the developer entered into a line extension agreement and paid a \$1,000 per connection capacity fee, also provided for by that Guide. Subsequent to City's instituting a one-year building moratorium for the Requested Area, TTUC connected the homes to its system. **[Last sentence deleted]**

If an exception is not reflected by a change, the Administrative Law Judge did not find the exception persuasive or the requested changes necessary.

As noted by City, a decertification of a portion of the area covered by City's application was effected after the issuance of the PFD in this case. The Commission is the proper entity to determine how that decertification affects recommended action on the application as set forth in the Proposed Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy G. Scudday". The signature is fluid and cursive, with the first name "Roy" and last name "Scudday" clearly distinguishable.

Roy G. Scudday
Administrative Law Judge

RGS/ap
cc: Mailing List

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AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **CITY OF TYLER**

SOAH DOCKET NUMBER: **582-12-3195**

REFERRING AGENCY CASE: **2011-1684-UCR**

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ ROY SCUDDAY

REPRESENTATIVE / ADDRESS

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Angela Pardo

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